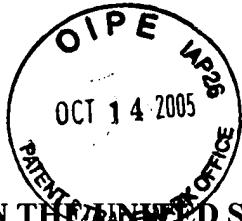


NEXP-0005



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Batoff, Jeffrey**

Serial No.: **10/085,394**

Group Art Unit: **3627**

Filed: **February 28, 2002**

Examiner: **Zeender, Florian M.**

For: **INVENTORY CONTROL AND BALANCING SYSTEM**

Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**ELECTION OF SPECIES**

In response to the Election of Species Requirement dated June 21, 2005, Applicant elects with traverse Group (3), which was identified in the Election of Species Requirement as including Claims 1, 28-31 and 51-62.

Applicant respectfully traverses the Election of Species Requirement and requests that it be withdrawn. Claims 63, 87-90 and 110-120 in Group (11) in particular are so similar in scope to the claims of the elected species that Applicant fails to understand why Group (11) was identified as a separate species from Group (3). Species must have mutually exclusive characteristics. MPEP 806.04(f). Applicant is unable to identify any limitation in independent Claim 1 that is mutually exclusive to the limitations contained within independent Claim 63 or vice versa. Applicant respectfully submits that the claims of Group (11) should be examined on the merits in this Application as part of the elected species.

**Certificate of Mailing Under 37 C.F.R. 1.8**

I hereby certify that this paper, along with any document or paper referred to as being attached or enclosed, is being sent in a pre-paid envelope first class mail to the in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 11, 2005.

Rebekah L. Mitchell  
Name of person mailing correspondence

Rebekah L. Mitchell  
Signature of person mailing correspondence

Application Serial No.: 10/085,394  
Response dated: 10/10/2005  
Reply to Office Action of: June 21, 2005  
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Moreover, 37 CFR §1.141(a) provides for examination of a “reasonable number” of species. Even if Group (11) is considered a species separate from elected Group (3), which it is not, Applicant submits that it would be unreasonable to deny examination of Group (11) given its obvious similarity to elected Group (3). What number of species could be considered more reasonable than two?

Applicant reserves the right to file one or more divisional patent applications claiming §121 priority from the present application pending the outcome of the examination of the present application. A speedy and favorable First Office Action on the Merits is respectfully solicited.

If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he is respectfully invited to telephone the undersigned at 215-599-0600.

Respectfully submitted,  
John L. Knoble  
Registration No. 32,387

Date: 10/10/05

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